

(c) *Order for informal hearing.* Upon receipt of a timely written request from a Respondent for an informal hearing on the portion of a directive requiring a bank to dismiss from office any director or senior executive officer, the Board shall issue an order directing an informal hearing to commence no later than 30 days after receipt of the request, unless the Respondent requests a later date. The hearing shall be held in Washington, DC, or at such other place as may be designated by the Board, before a presiding officer(s) designated by the Board to conduct the hearing.

(d) *Hearing procedures.* (1) A Respondent may appear at the hearing personally or through counsel. A Respondent shall have the right to introduce relevant written materials and to present oral argument. A Respondent may introduce oral testimony and present witnesses only if expressly authorized by the Board or the presiding officer(s). Neither the provisions of the Administrative Procedure Act governing adjudications required by statute to be determined on the record nor the Uniform Rules of Practice and Procedure in subpart A of this part apply to an informal hearing under this section unless the Board orders that such procedures shall apply.

(2) The informal hearing shall be recorded, and a transcript shall be furnished to the Respondent upon request and payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officer(s). The presiding officer(s) may ask questions of any witness.

(3) The presiding officer(s) may order that the hearing be continued for a reasonable period (normally five business days) following completion of oral testimony or argument to allow additional written submissions to the hearing record.

(e) *Standard for review.* A Respondent shall bear the burden of demonstrating that his or her continued employment by or service with the bank would materially strengthen the bank's ability:

(1) To become adequately capitalized, to the extent that the directive was issued as a result of the bank's capital

level or failure to submit or implement a capital restoration plan; and

(2) To correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the directive was issued as a result of classification of the bank based on supervisory criteria other than capital, pursuant to section 38(g) of the FDI Act.

(f) *Recommendation of presiding officers.* Within 20 calendar days following the date the hearing and the record on the proceeding are closed, the presiding officer(s) shall make a recommendation to the Board concerning the Respondent's request for reinstatement with the bank.

(g) *Time for decision.* Not later than 60 calendar days after the date the record is closed or the date of the response in a case where no hearing was requested, the Board shall grant or deny the request for reinstatement and notify the Respondent of the Board's decision. If the Board denies the request for reinstatement, the Board shall set forth in the notification the reasons for the Board's action.

§ 263.205 Enforcement of directives.

(a) *Judicial remedies.* Whenever a state member bank or company that controls a state member bank fails to comply with a directive issued under section 38, the Board may seek enforcement of the directive in the appropriate United States district court pursuant to section 8(i) (1) of the FDI Act.

(b) *Administrative remedies—(1) Failure to comply with directive.* Pursuant to section 8(i) (2) (A) of the FDI Act, the Board may assess a civil money penalty against any state member bank or company that controls a state member bank that violates or otherwise fails to comply with any final directive issued under section 38 and against any institution-affiliated party who participates in such violation or noncompliance.

(2) *Failure to implement capital restoration plan.* The failure of a bank to implement a capital restoration plan required under section 38, subpart D of Regulation H (12 CFR part 208, subpart D), or this subpart, or the failure of a company having control of a bank to fulfill a guarantee of a capital restoration plan made pursuant to section 38

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(e) (2) of the FDI Act shall subject the bank or company to the assessment of civil money penalties pursuant to section 8(i) (2) (A) of the FDI Act.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the Board may seek enforcement of the provisions of section 38 or subpart B of Regulation H (12 CFR part 208, subpart B) through any other judicial or administrative proceeding authorized by law.

[57 FR 44888, Sept. 29, 1992, as amended at 63 FR 58621, Nov. 2, 1998]

Subpart I—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders to Correct Safety and Soundness Deficiencies

SOURCE: 60 FR 35682, July 10, 1995, unless otherwise noted.

§ 263.300 Scope.

The rules and procedures set forth in this subpart apply to State member banks that are subject to the provisions of section 39 of the Federal Deposit Insurance Act (section 39) (12 U.S.C. 1831p-1).

§ 263.301 Purpose.

Section 39 of the FDI Act requires the Board to establish safety and soundness standards. Pursuant to section 39, a bank may be required to submit a compliance plan if it is not in compliance with a safety and soundness standard established by guideline under section 39(a) or (b). An enforceable order under section 8 may be issued if, after being notified that it is in violation of a safety and soundness standard established under section 39, the bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requiring submission of a compliance plan and issuing an enforceable order pursuant to section 39.

§ 263.302 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The Board may, based upon an examination, inspection, or any other information that becomes available to the Board, determine that a bank has failed to satisfy the safety and soundness standards contained in the Interagency Guidelines Establishing Standards for Safety and Soundness or the Interagency Guidelines Establishing Standards for Safeguarding Customer Information, set forth in appendices D-1 and D-2 to part 208 of this chapter, respectively.

(b) *Request for compliance plan.* If the Board determines that a State member bank has failed a safety and soundness standard pursuant to paragraph (a) of this section, the Board may request, by letter or through a report of examination, the submission of a compliance plan, and the bank shall be deemed to have notice of the request three days after mailing of the letter by the Board or delivery of the report of examination.

[60 FR 35682, July 10, 1995, as amended at 63 FR 55488, Oct. 15, 1998; 66 FR 8637, Feb. 1, 2001]

§ 263.303 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan—(1) In general.* A State member bank shall file a written safety and soundness compliance plan with the Board within 30 days of receiving a request for a compliance plan pursuant to § 263.302(b), unless the Board notifies the bank in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a State member bank is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the Board, submit a compliance plan under this section as part